

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the outstanding grounds of rejection is respectfully requested in light of the above amendments and the remarks that follow.

The Examiner has rejected claims 28 and 30-68 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1-27 of U.S. Patent No. 6,736,332.

Claims 28, 30-62 and 68 are also rejected under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1-108 of U.S. Patent 6,651,905.

Claims 28 and 29-68 are also provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of copending application Serial No. 10/634,747.

It is noted that applicants have already filed a Terminal Disclaimer with respect to U.S. Patent No. 6,736,332. Applicants will withhold the filing of a second Terminal Disclaimer to overcome the remaining obviousness-type double patenting grounds of rejection until the Examiner indicates that the rejected claims are otherwise allowable.

The Examiner has rejected claims 28-34, 36-40, 44, 50-53, 59-62 and 68 under 35 U.S.C. § 102(b) as anticipated by Kah, Jr. (U.S. Patent No. 5,588,594). In support of the rejection, the Examiner notes Kah's disclosure of a base 3, nozzle 11, first and second components 12, 17, respectively, water distribution plate 71 on shaft 71, an arc adjustment ring 15/15', a throttle control member 80 and a flow restriction portion 76, referencing Figure 1 of the '594 patent.

The Examiner's attention is drawn to the disclosure of the '594 patent which clearly discloses that the arc set flow control member 15, formed with the integral, sloped axially-

spiraled surface 17, does not rotate during a normal operation of the sprinkler but rather, rotates along with the shaft 71 only upon adjustment of the sprinkler arc via slot 77 at the upper end of the shaft. Further in this regard, the axially spiraled surface 17 of the flow control member 15 is the stream deflector as confirmed in the paragraph commencing with line 15 in column 3 of the patent.

In contrast, in the present invention, the water distribution plate rotates about a shaft that is normally fixed against rotation. It is only during an adjustment mode that the shaft may be rotated to throttle the flow through the sprinkler (unrelated to arc adjustment).

In order to more clearly highlight the differences between the claimed invention and the sprinkler disclosed in Kah '594, applicants have amended the various independent claims as follows.

Independent claim 21 has been amended to recite that the water distribution plate has a plurality of stream receiving drive grooves, and that the plate is supported for rotation on a normally non-rotatable shaft extending upwardly from the base. The claim in its original form already included limitations referring to the plate as adapted to be impinged by a stream emitted from the nozzle to thereby rotate the water distribution relative to the shaft to thereby distribute the stream over an arc of coverage determined by the arcuate discharge orifice.

Claim 1 also calls for a discrete arc adjustment ring rotatably mounted on the base. In his interpretation of Kah '594, the Examiner improperly cites component 15 of Kah as both the water distribution plate and the arc adjustment ring.

Independent claim 34 has been amended in a generally similar manner, calling for the water distribution plate to be supported for rotation on one end of a normally non-rotating shaft. The claim further requires that the distribution plate be adapted to be impinged by a stream

emitted from the nozzle and rotated to distribute the stream. Finally, the claim clarifies that the throttle member mounted on the opposite end of the shaft may be rotated in an adjustment mode to cause the throttle control member to move relative to the flow restriction portion to thereby adjust flow rate through the nozzle.

Independent claim 44 has been amended to require the water distribution plate be supported for rotation on one end of the shaft and that the plate be adapted to be impinged by a stream emitted from the nozzle assembly and rotated to distribute the stream. Independent claim 53 has been amended in a manner.

Finally, independent claim 68 has been amended to require that the water distribution plate be supported for rotation and one end of the normally non-rotatable shaft, and that the water distribution plate be provided with at least one drive groove such that the water distribution plate is rotated relative to the shaft when impinged upon by a stream emitted from the nozzle. The claim further clarifies that the shaft may be rotated in an adjustment mode to cause the throttle control member to move relative to a flow restriction portion to thereby adjust flow rate through the nozzle.

In all of the independent claims rejected as anticipated by Kah, there is now a clear distinction between the claimed invention and the disclosure in Kah, i.e., that the water distribution plate is mounted for rotation relative to a normally fixed shaft. As a result, it is clear that the rejected claims are not anticipated by Kah '594. In addition, it cannot be reasonably argued that Kah renders obvious the subject matter of the claims particularly in so far as any modification to Kah that would make the plate 17 rotatable, would also destroy the device for its intended purpose, i.e., the arc adjustment function would be rendered useless since continuous

rotation of the flow control member 15 would result in either wide open or fully closed flow rate regardless of the initial setting of the member 15.

For the above reasons, the Section 102 rejection has been overcome.

Minor amendments to the specification merely insure more exact correspondence of language in the specification and claims.

Applicants look forward to receiving notification from the Examiner that the claims are allowable, along with an indication as to whether or not the provisional obviousness-type double patenting rejections still apply in light of the above amendments. Applicants will then respond with a Terminal Disclaimer, if necessary, to overcome any remaining provisional double-patenting grounds of rejection.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



Michael J. Keenan
Reg. No. 32,106

MJK:rrl
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100